Internal Revenue Service
memorandum

date: MAR 12 1990

to: George Nunziata
Revenue Agent W:SEA

from: Christine Halphen
Special Assistant to the ACCI CC:INTL

subject: Application of U.S. gift tax to wire transfer of funds into U.S. bank account

This is in response to your question concerning the application of a U.S. gift tax in a situation where a nonresident alien who, while present abroad, makes gifts of money to U.S. resident aliens by instructing a foreign bank to wire transfer funds to the resident aliens' U.S. bank account. The U.S. resident aliens then make withdrawals from their U.S. account by checks or otherwise.

It appears that the gift in this situation is either a gift of intangible property or a gift of property situated outside the U.S., or both, and, therefore, is not subject to U.S. gift tax.

Section 2501(a)(1) of the Code imposes a tax on the transfer of property by gift. However, under section 2501(a)(2), no gift tax is imposed on the transfer of intangible property by a person who is not a U.S. citizen or a resident. Further, under section 2511(a), no gift tax is imposed on the transfer of tangible property situated outside the U.S. by a person who is not a U.S. citizen or resident.

There is no authority directly on point dealing with the issue of whether a gift of money in the form of a wire transfer of funds into a U.S. bank account from a foreign bank account is a gift taxable in the U.S. It is not clear that a gift in that form is a gift of cash, similar to a gift of bank notes, of a money order or of a check. In any event, it would seem that, even if the gift is of tangible property, the transfer takes place outside the U.S., and therefore, cannot be subject to gift tax. In PLR 8138103, the IRS ruled that where a nonresident alien makes a gift of a check to a U.S. resident alien, the gift is one of property situated outside the U.S. where the funds are payable by a U.S. bank but are to be drawn on a foreign bank.

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This conclusion is not inconsistent with the analysis in GCM 34845 (April 17, 1972) and GCM 36860 (September 24, 1976) which conclude that a gift of checks drawn on accounts in American banks and payable in American money is a gift of tangible property in the United States. According to the GCMs, the gift occurs upon payment, acceptance or certification of the checks. It follows from this that the relevant event is not the gift of the check itself but, rather, the payment, acceptance or certification of the check. Thus, in determining the place where the gift is made, the place where the check is given is not relevant. What is relevant is the place where the payment is made, or the check accepted for payment or where the check is certified. In the case of a foreign drawee bank, this place would be outside the U.S.

Similarly, where, as is the case in the situation you described, the funds are wire transferred from a foreign bank account, it can be assumed that the gift takes place at the time the funds are disbursed from the foreign account or when the foreign account is debited. In either case, the transfer would be considered to have taken place outside the U.S.

Note, however, the two following exceptions that may be relevant to your examination. A nonresident alien may be subject to gift tax with respect to transfers of intangible property if he or she lost his or her U.S. citizenship within 10 years of the gift, unless it is established that the loss of citizenship did not have as one of its principal purposes the avoidance of income, estate , gift or other taxes. Section 2501(a)(3). Also, a gift of cash or other liquid assets has been held to be a taxable gift of tangible property where the gift is made with the prearranged agreement or understanding with the donee that the cash or other liquid assets will be used to purchase U.S. real property or tangible property situated in the U.S. See Davies v. Commissioner, 40 T.C. 525 (1963), acq. 1966-1 C.B. 2; De Goldschmidt-Rothschild v. Commissioner, 168 F.2d 975 (2d Cir. 1948).

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